

REMARKS

Applicant initially wishes to acknowledge the indication of allowability of claims 34, 35 and 40 subject to their being rewritten in independent form. In response thereto claim 30 has been amended to include the subject matter of claim 32; claim 35 has been rewritten as new claim 51 and amended to include the subject matter of original claims 30 and 35; and claim 40 has been rewritten as new claim 54 and amended to include the subject matter of original claims 30 and 40. Allowance of these claims is respectfully solicited.

Claims 1 - 29, 31 - 37, 40, and 42 - 47 have been cancelled.

Claims 38, 39 and 41 remain unchanged except that the parent claim from which they depend has been amended.

New claim 48 is a combination of the subject matter of claims 30, 33 and 34.

Dependent claims 49 and 50 respectively correspond to original claims 38 and 39 but depend from new claim 48.

New claim 51 is a combination of the subject matter of claims 30 and 35.

Dependent claims 52 and 53 also respectively correspond to original claims 38 and 39 but depend from new claim 51.

Claims 30, 31, and 36-39 were rejected under 35 USC 102(b) as being anticipated by Hatschek et al. Applicant submits that the above amendments obviate the rejection.

Claims 30, 33, and 41 were rejected under 35 USC 102(b) as being anticipated by Pethig et al. Applicant submits that the above amendments obviate the rejection.

Claim 32 has been rejected under 35 USC 103(a) as unpatentable over Pethig et al in view of Crane. However, Pethig was well as Crane relate to dielectrophoretic cell sorters that

do not need a contact between the microelements and the cells, especially not for stimulating the cells as in claim 38 or for sensing potentials of said cells as in claim 39, both referenced back to new claim 30.

As can be taken from column 2, lines 30 through 51 of Pethig, the pumps are provided just for guiding the cells laterally through the dielectrophoretic fields. The guiding of the cells onto microelements is effected by the dielectrophoretic field and not by the pressure exerted by the pumps.

Accordingly, although claim 32 has been cancelled, claim 30 has been amended to essentially correspond to the subject matter thereof except that the amended claim now makes it clear that that force is not only for guiding the cells, but is for guiding the cells onto the microelements. Applicant submits that the claim thus now defines over the reference and reconsideration is requested.

Having thus amended the claims to avoid the rejections Applicant submits that the claims as now presented are patentable and the issuance of an early notice of allowance is solicited.

Respectfully submitted,

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